

Message Text

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E.O. 11652: N/A

TAGS: AFSP, AINF, GW, WB, AKB

SUBJECT: TAXATION OF PERSONS IN LOCAL NATIONAL AND NON-
APPROPRIATED FUND POSITIONS IN BONN AND BERLIN

REF: BONN 2138

1. IN PLACE OF PROPOSED QUESTIONS AND ANSWERS (REFTEL),
TAXPAYER ASSISTERS IN THE FRG AND BERLIN SHOULD USE THE
AGREED GUIDANCE CONTAINED HEREIN. THIS GUIDANCE SHOULD
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ALSO BE CIRCULATED TO CONSULAR OFFICERS AND MILITARY TAX
ADVISERS FOR THEIR USE IN ANSWERING TAX INQUIRIES FROM U.S.
CITIZENS AND RESIDENT ALIENS IN LOCAL NATIONAL AND NON-AP-
PROPRIATED FUND POSITIONS IN THE FRG AND BERLIN.

2. CONSIDERATIONS GUIDING DEPT, DOD AND IRS IN PREPARATION
OF AGREED GUIDANCE WERE:

A. SOME BERLIN ISSUES DIFFER FROM OTHERS COMMON TO BERLIN AND THE FEDERAL REPUBLIC OF GERMANY. THESE SPECIAL BERLIN ISSUES SHOULD BE TREATED SEPARATELY.

B. US CITIZENS IN LOCAL NATIONAL POSITIONS IN BERLIN WHO ARE DEPENDENTS OF MEMBERS OF THE US FORCES IN BERLIN ARE NOT IN THE SAME SITUATION AS NON-DEPENDENTS.

C. PERSONS WHO HAVE TAX QUESTIONS MAY NOT FULLY UNDERSTAND THEIR PERSONNEL STATUS OR KNOW WHETHER THE PAYMENT THEY RECEIVE COMES FROM OCCUPATION COST FUNDS. THUS THE PERSONS GIVING TAX ADVICE WILL HAVE TO BE ABLE TO DETERMINE WHICH PARAGRAPH, IF ANY, OF THE AGREED STATEMENT APPLIES TO THE TAXPAYER IN QUESTION. THE USE BY THE QUESTIONER OF LAYMEN'S TERMS ("I WORK FOR..." OR "I AM EMPLOYED BY...") SHOULD NOT PREJUDGE THE ANSWER TO THE QUESTION OF WHETHER THESE PERSONS ARE USG EMPLOYEES IN THE TECHNICAL SENSE INVOLVED HERE.

3. THE FOLLOWING AGREED GUIDANCE ATTEMPTS TO AVOID ALTERING THE STATUS QUO OR RAISING POLITICALLY SENSITIVE ISSUES PRIOR TO INTERAGENCY REVIEW.

4. QUOTE: THE FOLLOWING QUESTIONS AND ANSWERS HAVE BEEN PREPARED FOR YOUR GUIDANCE IN ANSWERING INQUIRIES FROM US LIMITED OFFICIAL USE

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CITIZENS WHO WORK IN "LOCAL NATIONAL" POSITIONS INCLUDING "NON-APPROPRIATED FUND" POSITIONS IN BERLIN AND THE FRG. THE STATUS OF THESE PERSONS UNDER US TAX LAW IS VERY COMPLEX. THE IRS AND OTHER AGENCIES ARE NOW UNDERTAKING A REVIEW OF THE ISSUES INVOLVED AND IT IS UNLIKELY THAT THIS REVIEW WILL BE COMPLETED BEFORE THE AFFECTED TAXPAYERS HAVE TO FILE THEIR RETURNS. IN ANSWERING TAXPAYER INQUIRIES, YOU WILL HAVE TO IDENTIFY THE TAXPAYER'S EMPLOYMENT CATEGORY IN ORDER TO EXPLAIN TO HIM HOW HIS PARTICULAR STATUS AFFECTS THE PREPARATION OF HIS RETURN.

A. QUESTION: I AM A U.S. CITIZEN (OR RESIDENT ALIEN) PAID IN DEUTSCHE MARK (DM). DO I HAVE TO FILE A U.S. INCOME TAX RETURN ON SUCH INCOME?

ANSWER: A U.S. CITIZEN OR RESIDENT ALIEN MUST INCLUDE IN GROSS INCOME ALL INCOME FROM WHATEVER SOURCE, EXCEPT FOR THOSE ITEMS SPECIFICALLY EXCLUDED BY THE INTERNAL REVENUE CODE. GROSS INCOME WOULD INCLUDE COMPENSATION PAID EITHER IN DOLLARS, DEUTSCHE MARK OR ANY FOREIGN CURRENCY, AND THE FAIR MARKET VALUE OF BENEFITS RECEIVED IN KIND. PAYMENTS IN FOREIGN CURRENCY SHOULD BE CONVERTED TO DOLLAR VALUES AT THE RATE EXISTING AT THE TIME OF RECEIPT OF FOREIGN

CURRENCY.

B. QUESTION: CAN I EXCLUDE INCOME EARNED OVERSEAS?

ANSWER: -UNDER SECTION 911 OF THE INTERNAL REVENUE CODE, A RECIPIENT OF GROSS INCOME FROM SOURCES OUTSIDE THE U-S. MAY EXCLUDE EARNED INCOME UP TO A MAXIMUM OF \$15,000 PER YEAR. HOWEVER, YOU MAY NOT EXCLUDE AMOUNTS PAID BY THE UNITED STATES OR ANY AGENCY THEREOF.

C. QUESTION: (BERLIN ONLY) I AM EMPLOYED IN A LOCAL

NATIONAL POSITION ADMINISTERED BY (U.S. MISSION BERLIN, U.S. ARMY BERLIN, OR 7350TH AIR BASE GROUP, USAF, BERLIN). HOW DOES SECTION 911 AFFECT ME? (AM I A U.S. EMPLOYEE?)
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ANSWER: IT IS OUR UNDERSTANDING THAT YOUR CONTRACT STATES THAT YOU ARE NOT AN EMPLOYEE OF THE U.S. HOWEVER, THIS DOES NOT NECESSARILY DETERMINE YOUR STATUS FOR U.S. TAX LAW PURPOSES. THE IRS IS CURRENTLY EXAMINING WHETHER YOU ARE A U.S. EMPLOYEE FOR TAX PURPOSES. IT IS NOT EXPECTED THAT A FINAL DECISION WILL BE REACHED ON THIS MATTER BEFORE IT IS NECESSARY FOR YOU TO FILE YOUR TAX RETURN FOR TAX YEAR 1977.

THERE ARE THREE ALTERNATIVES AVAILABLE TO YOU WITH RESPECT TO THE FILING OF YOUR 1977 RETURN:

(1) YOU MAY REQUEST AN EXTENSION OF TIME TO FILE THE RETURN. SUCH REQUEST MUST BE MADE BEFORE THE DUE DATE FOR FILING THE RETURN AND MAY BE EITHER ON FORM 2688 OR IN A LETTER. THE GRANTING OF AN EXTENSION TO FILE THE RETURN DOES NOT RELIEVE YOU FROM THE PAYMENT OF INTEREST IF UNPAID TAXES ARE ULTIMATELY FOUND TO BE DUE. INTEREST WILL BE COMPUTED FROM THE DUE DATE OF THE RETURN UNTIL THE TAX IS PAID.

(2) YOU MAY ELECT TO FILE YOUR RETURN AS IF YOU WERE AN EMPLOYEE OF THE U.S. GOVERNMENT. IF A DECISION IS ULTIMATELY MADE THAT YOU ARE NOT AN EMPLOYEE OF THE U.S. GOVERNMENT FOR FEDERAL TAX PURPOSES, YOU WOULD BE ENTITLED TO A REFUND WITH INTEREST OF ANY TAXES OVERPAID.

(3) IF YOU MEET ALL THE REQUIREMENTS OF SECTION 911, YOU MAY ELECT TO FILE A RETURN AND CLAIM THE EXCLUSION BENEFITS PROVIDED THEREIN. TO DO SO, YOU MUST FILE A FORM 2555, "EXEMPTION OF INCOME EARNED ABROAD" ALONG WITH FORM 1040. ALL QUESTIONS ON FORM 2555 MUST BE ANSWERED IN FULL, INCLUDING NAME OF EMPLOYER. SINCE THE IRS IS CONSIDERING
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THE QUESTION OF WHO IS YOUR EMPLOYER FOR TAX PURPOSES, THIS ALTERNATIVE MAY SUBJECT YOUR RETURN TO AN AUDIT. IF ADDITIONAL TAX IS DETERMINED TO BE DUE, YOU WILL, OF COURSE, BE ABLE TO AVAIL YOURSELF OF THE IRS APPEAL PROCEDURES.

IN VIEW OF THE UNCERTAINTY SURROUNDING YOUR STATUS, WE WOULD RECOMMEND THAT YOU CONSIDER THE FIRST ALTERNATIVE DESCRIBED ABOVE (EXTENSION).

D. QUESTION: I AM EMPLOYED IN A NON-APPROPRIATED FUND POSITION. AM I A U.S. EMPLOYEE?
ANSWER: THE STATUS OF NON-APPROPRIATED FUND EMPLOYEES IS CURRENTLY UNDER REVIEW BY THE IRS. IT IS NOT EXPECTED

THAT A FINAL DECISION WILL BE REACHED ON THIS MATTER BEFORE IT IS NECESSARY FOR YOU TO FILE YOUR TAX RETURN FOR TAX YEAR 1977. (CONTINUE WITH THREE ALTERNATIVES AS LISTED IN QUESTION C.)

E. QUESTION: GERMAN INCOME TAX WAS WITHHELD FROM MY PAY-CHECKS. AM I ENTITLED TO CLAIM THE AMOUNT OF TAX WITHHELD FROM MY SALARY AS A DEDUCTION OR CREDIT IN COMPUTING THE NET AMOUNT OWED TO THE UNITED STATES.
ANSWER: A DETERMINATION ON THIS QUESTION HAS YET TO BE MADE. IF YOU ARE A U.S. EMPLOYEE, IT IS POSSIBLE THAT THIS TAX WAS ERRONEOUSLY WITHHELD. IN THAT EVENT, YOU MAY FILE A CLAIM FOR REFUND OF SUCH TAX WITH THE LOCAL GERMAN FINANCE OFFICE. (IF TAXPAYER ASKS ABOUT HIS EMPLOYMENT STATUS, REFER TO QUESTIONS C AND D ABOVE ON PENDING IRS REVIEW.)

F. QUESTION: (BERLIN ONLY) I AM A DEPENDENT OF A MEMBER OF THE U.S. ARMED FORCES AND AM EMPLOYED IN A LOCAL NATIONAL POSITION ADMINISTERED BY (U.S. MISSION BERLIN, U.S. ARMY BERLIN, OR 7350TH AIR BASE GROUP, USAF, BERLIN). I HAVE ONLY BEEN RECEIVING 85 PERCENT OF WHAT NON-DEPENDENTS,
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GERMANS AND THIRD-COUNTRY NATIONALS RECEIVE. I UNDERSTOOD THAT I WOULD NOT HAVE TO PAY TAXES BECAUSE IN A SENSE, TAXES WERE TAKEN OUT OF MY SALARY IN ADVANCE. IS THAT RIGHT?

ANSWER: YOU MUST REPORT SUCH INCOME AS GROSS INCOME; HOWEVER, WHETHER OR NOT YOU WILL OWE U.S. TAXES ON SUCH INCOME DEPENDS IN PART ON WHAT EXEMPTIONS ARE AVAILABLE TO

YOU. THE TAX STATUS OF U.S. PERSONS EMPLOYED IN LOCAL NATIONAL POSITIONS IN BERLIN IS BEING REVIEWED BY THE IRS AND UNFORTUNATELY, WE CANNOT GIVE YOU A FINAN ANSWER AT THIS TIME WHETHER THE IRS WILL UPHOLD YOUR CLAIM OF THE SECTION 911 EXEMPTION. (CONTINUE WITH THREE ALTERNATIVES AS LISTED IN QUESTION C.) END QUOTE

5. (FYI: BEFORE FINAL DETERMINATION IS MADE, THE ISSUES RAISED BY THESE QUESTIONS WILL BE DISCUSSED WITH THE FEDERAL REPUBLIC OF GERMANY AND THE ALLIED KOMMANDATURA BERLIN. END FYI.)

6. ACTION REQUESTED: PERSONS GIVING U.S. TAX ADVICE SHOULD BE INSTRUCTED TO BEGIN USING THE AGREED GUIDANCE IMMEDIATELY. VANCE

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